Case Number: 2013-0447
[redacted] vs. [redacted]
Hearing Officer: Joseph P. Selbka

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Illinois State Board of Education
Special Education Services
100 North First Street
Springfield, Illinois 62777

Impartial Due Process Hearing Decision
Cover Page

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District Name [redacted] **Phone:** 773-553-1501
Superintendent [redacted]
Address [redacted]
Represented by [redacted]

Parent Name [redacted] **Phone:** [redacted]
Address [redacted]
Represented by [redacted]

Date and Timelines
Date of Written Request:05/09/2013
Date of Pre-hearing Conf: 08/26/2013
Date of Hearing: 9/17/2013 to 10/15/2013
Date of Decision: 10/24/2013

Summary of Decision The parents filed due process claiming Student needs multi-sensory research based instruction in basic math order to obtain FAPE. The IHO found for the Parents.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF [redacted]	)	
	)	**ISBE CASE NO. 2013-0447**
	)	
v.	)	**Joseph P. Selbka**
	)	Impartial Due Process
[redacted]	)	Hearing Officer

FINAL HEARING OFFICER DETERMINATION AND ORDER

I. Introduction and Procedural History

1. The initial complaint was filed on May 9, 2013. The matter was continued from time to time as reflected by orders in the record. [redacted] ("Parents"/"Father"/"Mother") filed the complaint on behalf of their son, [redacted] ("Student"). An amended complaint was filed on August 23, 2013, with leave of the undersigned (which was given in a verbal order at the prehearing conference).

2. A pretrial conference was held on August 29, 2013. Both parties have submitted preconference disclosure statements through e-mail. The parties have waived the resolution process and conducted a mediation on June 18, 2013.

3. The hearing occurred on September 17 and 18, 2013. Closing briefs were submitted on October 15, 2013. At the hearing, the following persons testified: [redacted] ("District School Psychologist"); [redacted] ("District Special Services Administrator"); [redacted] ("Independent Psychologist"); [redacted] ("District Summer Teacher"); [redacted] ("Current Math Teacher"); Mother. District Exhibits 1-574 were admitted into evidence without objection. Parent Exhibits A1-A4, B1-B13, C2-C307, D1-D58, E1-E9 were admitted into evidence without objection.

II. Issues for Hearing

4. The issues to be decided in the Parent's amended complaint were:

a) Whether the District designed an appropriate IEP for two years prior to the filing of the complaint to the date of hearing. Specifically, the Parent contends Student needs multi-sensory researched based instruction in math and a laptop to receive FAPE.

b) In the alternative, whether the District failed to implement Student's IEP by failing to provide a laptop.

At the hearing, the parties agreed to settle Issue b. Specifically, the parties agreed to have an agreed order entered that Student will be provided a laptop for the remainder of his time at CPS with all software required by the IEP to be uploaded into the Lap Top. Thus all that remains is Issue a.

III. Findings of Fact

5. Student is a ninth grader diagnosed with multiple disabilities. Student currently attends a local high school, [redacted]

Aspects of Student's Disability Including his Ability in Math

6. Student has been diagnosed with autism, multiple learning disabilities, and speech and language impairments. Student has also been diagnosed with verbal apraxia, fragile x syndrome, and processing disorders.

7. For purposes of this case, Student's disabilities manifest in a difficulty to comprehend basic math. Student has significant problems in understanding basic math calculations. Student currently can only count up to the number 5. Student cannot complete most addition and subtraction calculations above a basic level (PD A2). Student has problems with visual and spatial reasoning. Student is unable to complete basic math facts (PD A2).

8. Related to Student's problems in math are his problems in working memory and processing. See PD B12.

9. Two psychologists testified at hearing (Independent Psychologist and District School Psychologist). Both psychologists testified that Student is currently below the 1st percentile in math. He currently has the math ability of (at best) a first grader. See PD A2, B10.

10. District Special Services Administrator opined that Student's math skills are higher than the two psychologists (and their evaluations) suggest. District Special Services Administrator relies upon some standardized tests which show Student is in the 73rd Percentile in math. However, District Special Services Administrator's contentions do not take the unique strengths and weaknesses of this child into account when making his opinion. Specifically, District Special Services Administrator (who has no degrees or qualifications in special education other than being an administrator for the District) based his opinion on the fact that many disabled students have stronger abilities in math than formal case study evaluations suggest; and the fact that Student is able to do well on math tests administered at school (See e.g. PD B9). District Special Services Administrator never considered the unique abilities of this child or individually evaluated this child (even informally).

As District School Psychologist testified to, Student has a complex psychological and learning profile. Student has significant strengths from which he can do well on tests with the appropriate accommodations. Student's Mother presented uncontradicted testimony that Student is able to complete math calculations with a calculator while not understanding the basic calculations which the calculator completes for Student. Student's IEP allows as an accommodation, Student's use of a calculator at all times (PD C27, PD C 105, PD C251, PD C291). District Summer Teacher presented uncontradicted testimony that Student was always allowed to use a calculator on exams and during math class. Therefore, the undersigned makes a credibility finding that Student was allowed to use his calculator on assessments conducted at school (apart from the case study evaluations done by the psychologists).

11. In light of the above stated credibility finding, the undersigned makes an inference that the District assessments (administered apart from formal case studies) do not properly assess or serve as evidence of Student's proficiency in basic math skills. The undersigned adopts the opinions of District School Psychologist and Independent Psychologist that Student has very poor basic math skills. The undersigned makes a credibility finding in favor of Student's Mother and the psychologists that Student does not have proficiency in basic math skills. The undersigned makes an inference that Student is able to mimic completion of basic math calculations on school assessments without understanding the logic behind them by using a calculator to complete the basic math calculations.

Student's Progress (or lack thereof) in Math and District Responses

12. Student's IEPs since 2010 state that his level of performance in basic math skills have not changed significantly for years (SD 21,35; SD 141, 168; SD 188, 207; SD 339, 356). District Special Services Administrator claimed that Student's IEPs were improperly drafted and do not reflect Student's true ability in math. District Special Services Administrator claimed one teacher did not compile Student's IEPs properly. However, the undersigned makes a credibility finding against District Special Services Administrator for the following reasons: (1) the entire IEP Team agreed (or should have agreed on) the Student's present levels of performance; (2) Student's present levels of performance remained in place in 2013(after District Special Services Administrator became involved); (3) two case study evaluations show Student lacks basic math skills; (4) Student's Mother testified credibly that Student lacks basic math skills.

13. Student's IEP report cards state that Student is making progress on his goals. However, in light of the fact that Student's present levels of performance haven't changed for years (for the reasons set forth above), the undersigned finds that Student has not made progress on his goals at least as to such goals measure basic math skills. Moreover, to the extent the goals fail to measure basic math skills, progress on Student's goals do not measure progress appropriately.

14. While the District has changed the number of minutes Student is taught in math instruction, the District never has even attempted multi-sensory research based programs in math.

15. District Summer Teacher provided Student with math over the summer of 2013. District Summer Teacher's tutoring was not provided pursuant to Student's IEP, but was a compensatory service provided as a result of a settlement agreement (related to Parents' claims of denial of FAPE which are not the subject of this due process proceeding).

16. District Summer Teacher testified that Student was able to make progress on understanding basic math concepts related to money and time, although Student did not meet his annual goals in math. Moreover, with the aid of 1:1 tutoring, Student was able to understand basic story problems. District Summer Teacher is a licensed special education teacher. The undersigned makes a credibility finding that Student is able to make progress and learn basic math concepts.

17. The District makes an argument in its closing brief that Student will never be able to understand abstract mathematical concepts so that Student could understand the meaning behind basic math. However, District Summer Teacher testified that by using some of the techniques in multi-sensory instruction, Student was able to make progress on basic math. Moreover, Student's IEPs suggest that "hands on learning" is a way in which Student can learn. Hands on learning is a key component of multi-sensory researched based instruction. Therefore, the undersigned makes an inference that Student can learn basic math concepts when provided with an appropriate methodology which meets Student's unique needs.

18. The District, through Student's Current Math Teacher, admitted that Student is currently not being taught basic math skills. Rather, Student is being provided the accommodations to make up for Student's failure to understand basic math in an attempt to teach advance math skills.

Recommendations of the Evaluators

19. Independent School Psychologist and District School Psychologist both recommended multi-sensory, researched based math programs designed to teach Student basic math skills. Programs such as "Saxon Math" or "Singapore Math" can be used to teach Student basic math skills. Both psychologists based their opinions on their assessments; professional norms which require a preference for programs shown to be effective based upon research; (as well as the statutory requirement for a preference for research based methods of teaching).

IV. Conclusions of Law

Burden of Proof, Evidentiary Issues, and The Authority of The Hearing Officer

20. The Federal and State Special Education Laws are set out in the Individual with Disabilities Education Act, 20 U.S.C.A. 1400 *et seq.* ("IDEA") and Article 14 of the Illinois School Code, 105 ILCS 5/14-8.02a. In enacting IDEA, Congress intended to establish a "cooperative federalism." *Evans v. Evans*, 818 F.Supp.1215, 1223 (N.D. Ind. 1993). Compliance with minimum standards set out by the federal act is necessary, but IDEA does not impose a nationally uniform approach to the education of children with a given disability. *Id.* Thus IDEA does not preempt state law if the state standards are more stringent than the federal minimums set by IDEA. *Id.*

21. In regard to the burden of proof in a special education proceeding, the Supreme Court has held that the ultimate burden of persuasion lies with the party filing the due process complaint. *Schaffer v. Weast* 546 U.S. 49 (2005). However, the Illinois School Code has placed a heightened burden on school districts. 105 ILCS 5/14-8.02a (g-55). In a due process proceeding, the school district has the initial burden of production to show that the special education needs of the student are identified and that the special education program and related services proposed are adequate, appropriate and available. *Id.* After the District meets its initial burden of production, the ultimate burden of persuasion then shifts to the the filing party to prove his/her/its case. The parties must prove their cases by a preponderance of the evidence.

22. In determining whether a placement is proper under IDEA and the School Code, the hearing officer does not need to defer to the school district witnesses. *School District of the Wisconsin Dells v. Z.S.*, 295 F.3d 671, 676 (7th Cir. 2002)(like Wisconsin ALJ's, Illinois Impartial Due Process Hearing Officers are presumed to be experts on special education and special education law, see 105 ILCS 5/14-8.02c); *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, 41 F.3d 1162, 1167 (7th Cir. 1994)(hearing officer characterized as expert witness in determining whether placement is proper).

Therefore, even though a medical expert witness cannot prescribe educational placements (*See e.g. Marshall Joint School District No. 2. v. C.D. ex rel Brian D.*, 616 F.3d 632, 638-642 (7th Cir. 2010), a hearing officer can override a school district's proposed placement after hearing pertinent medical testimony. Specifically, a hearing officer can use his/her special expertise regarding special education and special education law to draw inferences as to the appropriate placement under the law—after taking into account the physical and psychological manifestations and symptoms of any given disability as testified to by a medical expert. *School District of the Wisconsin Dells v. Z.S, supra; Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education, supra. See also Heather S. v. State of Wisconsin,* 125 F.3d 1045, 1053-1054 (7th Cir. 1997)(hearing officer characterized as having special expertise in special education law). *See also Marshall Joint School District No. 2. v. C.D. ex rel Brian D.*, 616 F.3d 632, 640 (7th Cir. 2010) (a medical expert's diagnosis is important evidence and should be considered by the IEP Team and, by extension, hearing officers, in determining a student's special education placement).

23. In determining whether an expert is qualified on a specific subject matter, education, experience, or other training can provide the appropriate qualifications for an expert. See *Fox v. Dannenberg*, 906 F.2d 1253, 1255 (8th Cir. 1990) and *United States v. Briscoe,* 896 F.2d 1476, 1498-1497 (7th Cir. 1990); and *Valiulis v. Scheffels,* 191 Ill.App.3d 779, 785 (1990). The test to determine whether expert testimony should be admissible is whether the expert has specialized knowledge and expertise in the area where the expert expresses his/her opinion. *Valiulis v. Scheffels,* 191 Ill.App.3d 779, 785 (1990). It is not necessary to be licensed in Illinois in a field of expertise to provide expert testimony on that expertise. *Thompson v. Gordon,* 356 Ill.App.3d 447, 459-460 (2005). An expert also does not need to have a degree in the field for which the expert is providing opinions as long as the expert has an expertise in said field. *Valiulis v. Scheffels,* 191 Ill.App.3d 779, 786 (1990); *Kinsey v. Kolber*, 103 Ill.App.3d 933, 953 (1982).

24. In Illinois state administrative proceedings, hearsay which has been objected to is generally inadmissible. *Sudzus v. Department of Employment Security,* 393 Ill.App.3d 814 (2009).[1] To the extent hearsay is admitted without objection, the evidence can be given its natural weight. *Abbott Industries, Inc. v. Department of Employment Security,* 2011 Ill.App.(2d) 100,610 (2nd Dist. 2011); *Sykes v. District of Columbia,* 518 F.Supp.2d 261, 49 IDELR 8 (D.D.C. 2007).

[1]This aspect of Illinois administrative law is different than federal administrative hearings where hearsay is admissible as long as it is relevant and material. *Otto v. Securities and Exchange Commission,* 253 F.3d 960, 966 (7th Cir. 2001).

25. The trier-of-fact in administrative adjudications generally should accept uncontradicted factual testimony as true. *Crabtree v. Illinois Department of Agriculture, Division of Agricultural Industry Regulation*, 128 Ill.2d 510, 518 (1989). Thus, for the undersigned to disregard factual testimony, it should be contradicted by positive testimony or circumstances, the witness proferring the testimony must be impeached, or the testimony must be inherently improbable. *Bucktown Partners v. Johnson,* 119 Ill.App.3d 346, 351 (1st Dist. 1983).

26. Admissions by counsel may be treated as judicial admissions and may be treated as binding on the party making the admissions. *Lowe v. Kang*, 178 Ill.App.3d 772, 776 (1988).

27. Inferences are conclusions of fact derived from the evidentiary facts introduced at hearing. *Smith v. Tri-R Vending,* 249 Ill.App.3d 654, 661 (1993). Hearing officers can make reasonable inferences from the evidence adduced at trial. However, like in all administrative adjudications, the inferences must be supported by facts proved or admitted. *National Labor Relations Board v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 814-815 (1990)(Scalia, j. dissenting). The inferences must be drawn from facts through a process of logical reasoning. *Id.* Thus, the hearing officer must draw an accurate and logical bridge between the evidence and result. *Frobes v. Barnhart,* 467 F.Supp.2d 808, 817 (N.D. Ill. 2006). Moreover, any inference a hearing officer makes must be supported by substantial evidence. Substantial evidence means relevant evidence that a reasonable mind might accept as adequate to support his/her conclusions. *Frobes v. Barnhart*, 467 F.Supp.2d 808, 817 (N.D. Ill. 2006).

28. Expert opinions are admissible if the experts are considered qualified under a relaxed standard similar to the *Daubert* standard used in the federal courts. *Pasha v. Gonzalez*, 433 F.3d 530, 535 (7th Cir. 2005). To the extent the hearing officer relies upon expert opinions, the expert opinions must be inferred ultimately from facts in the record, and the inferential process by which an expert reaches his/her conclusions must be fully explained. *Zamecnik v. Indian Prairie School District No. 204,* 636 F.3d 874 (2011) (expert testimony must be grounded by material facts in the record and the inferential process by which an expert reaches his/her conclusions must be fully explained in the record); *Mid- State Fertilizer Co. v. Exchange National Bank of Chicago*, 833 F.2d 1333, 1339-1340 (7th Cir. 1989)(in litigation, expert opinions must be grounded in facts and inferred from a process of logical reasoning).

29. Hearing officers are entitled to and often need to make credibility findings. However, in such cases, hearing officers should provide reasons for why they found testimony credible or not credible. *Marshall Joint School District No. 2. v. C.D. ex rel Brian D.,* 616 F.3d 632, 638 (7th Cir. 2010)

30. Illinois law also imposes upon all administrative hearing officers the obligation to properly make an administrative record. *Meneweather v. Board of Review,* 249 Ill.App.3d 980, 984-985 (1992). As in most state administrative proceedings, Illinois administrative hearing officers have an obligation not only to listen to evidence presented by the parties, but to affirmatively find facts necessary to properly to determine which party should prevail under the law. *Meneweather, supra; See also,* Frank Cooper, State Administrative Law, Vol. 1, Bobbs-Merrill Company, Inc. (1965), pg. 336. Similarly, all special education cases, hearing officer decisions must be based on substantive grounds as to whether the child's special education needs

are being met. 20 U.S.C.A. 1415(f)(3)(i); *A.G. v. District of Columbia.* 57 IDELR 9, 794 F.Supp.2d 133 (D.D.C. 2011).

In administrative litigation, the hearing officer must be concerned with not only ensuring a fair process wherein the parties can present evidence, but also a proper result under the law because there is a significant public interest in properly having the law carried out. Landis, John, "*The Administrative Process*," Yale University Press (1938) excerpted in Foundations of Administrative Law, Schuck, Peter (ed.) Foundation Press (2004), pp. 13-14. For this reason, administrative hearing officers are constitutionally permitted to depart from the adversarial model and independently obtain evidence and develop an administrative record while remaining a neutral and impartial decision maker. *Sims v. Apfel,* 530 U.S. 103, 110-11 (2000); *Richardson v. Perales,* 402 U.S. 389, 400-401 (1971) (social security administrative law judges constitutionally permitted to develop the record to determine all facts necessary whether benefits should be granted under law).

For this reason, the General Assembly provided impartial due process hearing officers with significant powers to independently compel the production of evidence necessary to reach a correct determination. Specifically, impartial due process hearing officers in Illinois are empowered to: (1) compel production of any evidence prior to the close of the administrative evidentiary record, 105 ILCS 5/14-8.02a(g-55); (2) order independent evaluations at school district expense, 105 ILCS 5/14-8.02a(g-55); and (3) question party witnesses during due process hearings, 23 IL ADC 226.660(b).

Conclusions of Law Related to IEP Design

31. A District must develop an IEP which is reasonably calculated to provide the student with an educational benefit. *Alex R. v. Forrestville Community Unit School District No. 221,* 375 .progress, not regression or trivial academic advancement. *M.B. v. Hamilton Southeastern Schools,* 112 LRP 6281 (7th Cir. 2011). In determining whether IEP designs are reasonable, a hearing officer need not accept school district claims as true regarding the reasonableness of IEP design, but neither should the hearing officer substitute his/her judgment for that of the school officials who have designed the IEP as the hearing officer determines whether the District provided an IEP reasonably calculated to provide an educational benefit. *School District of the Wisconsin Dells v. Z.S.,* 295 F.3d 671, 37 IDELR 34 (7th Cir. 2002). An IEP must address all aspects of Student's disability, both academic and behavioral. *Alex R. v. Forrestville Community Unit School District No. 221,* 375 F.3d 603, 41 IDELR 146 (7th Cir. 2004).

32. In general, hearing officers should defer to the district on issues of methodology as long as use of the proposed methodology is reasonably calculated to providing the student with an educational benefit. *Lachman v. Illinois State Board of Education,* 852 F.2d 290, 297 (7th Cir. 1988). However, reasonableness generally requires an IEP Team to use methodologies which educational professionals have determined are effective in teaching children with similar disabilities. Like in all social sciences, effectiveness is determined using peer reviewed research. Therefore, to the extent practicable, a district must use a methodology to provide special education and related services based upon peer reviewed research. 20 U.S.C.A. 1414(d)((1)((A)(i)(IV); 34 CFR 300.320. Moreover, when a district fails to or cannot articulate a methodology, less deference (or no deference) is appropriate. *TH v. Board of Education of Palatine Community Consolidated School District 15,* 55 F.Supp.2d 830 (N.D.Ill. 1999).

33. When a hearing officer determines whether an IEP is reasonably designed to provide a student with FAPE (or needs to be revised), the hearing officer must judge the district based upon what the district knew or reasonably could have known at the time the IEP was drafted—not solely on whether academic progress occurred. *M.B. v. Hamilton Southeastern Schools,* 668 F.3d 851 (7th Cir. 2011); *Thompson RJ-J School District v. Luke P.,* 540 F.3d 1143 (10th Cir. 2008); *Adams v. State of Oregon,* 195 F.3d 1141, 1149 (9th Cir. 1999); *Fuhrmann v. East Hannover Board of Education,* 993 F.2d 1031, 1041 (3rd Cir. 1993); *Roland M. v. Concord School Committee,* 910 F.2d 983, 992 (1st Cir. 1990).

34. A reasonable calculation of an educational benefit is gauged using a student's potential-even though the District is not required to maximize a student's potential in designing an IEP. *Ridgewood Board of Education v. N.E.,* 172 F.3d 238, 247 (3rd Cir. 1999).

35. In determining whether IEP design is reasonable, a student's academic progress under the proposed IEP is evidence a hearing officer must consider. *T.H. v. District of Columbia,* 52 IDELR 216, 620 F.Supp.2d 86 (D.D.C. 2009). *Hunter v. District of Columbia,* 51 IDELR 34 (D.D.C. 2008). However, a lack of academic progress is not dispositive of whether the IEP has been reasonably designed to provide a student with FAPE. *Id. See also Lessard v. Wilton Lyndeborough Cooperative School District,* 518 F.3d 18, 29 (1st Cir. 2008).

36. In determining whether a student is making academic progress, objective factors such as regular advancement from grade to grade and achievement of passing grades is evidence of progress. *Alex R., supra,* 375 F.3d at 615. However, progress from grade to grade is not dispositive as to whether a child is receiving FAPE. *Mary P. v. Illinois State Board of Education,* 919 F.Supp. 1173, 1179-1181 (N.D. Ill. 1996).

37. Another factor in determining whether an IEP is reasonably calculated to provide an educational benefit is whether the IEP addresses the Student's unique needs. 34 CFR 300.39; *Jaccari J v. Board of Education, Chicago Public School District No.299,* 690 F.Supp.2d 687, 702 (N.D.Ill. 2010). In determining whether the District considered a student's unique needs properly in developing an IEP, general principles of reviewing decision making in administrative law are helpful. Decisions are unreasonable if the IEP Team: has relied on factors Congress has not intended it to consider; has entirely failed to consider an important aspect of the problem; has offered an explanation for its decision counter to the evidence before the IEP Team; or is so implausible that the decision could not be ascribed to a difference in view or the product of IEP Team expertise. *See Motor Vehicle Manufacturer's Association v. State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29 (1983) (determining when an agency's decision making is arbitrary and capricious in rulemaking which is roughly analogous to the task hearing officers have to judge the reasonableness of IEP Teams in making decisions regarding IEP design). Similarly, when educational professionals depart from well-established practices, there must be a good reason for doing so. *Id.*

38. A District is not entitled to use an IEP which is not producing progress for years on end. *O'Toole v. Olathe District Schools Unified School District No. 233,* 144 F.3d 692 (10th Cir. 1998). A District must revise an IEP when the IEP is obviously failing to produce progress or in

any other situations when it would be appropriate to do so. *M.M. v. Special School District No. 1*, 512 F.3d 455, 49 IDELR 61 (8th Cir. 2008).

39. The IEP must comply with the requirements set forth in 20 U.S.C.A. 1414(d) in order to provide FAPE. 20 U.S.C.A. 1401(9). Section 1414(d) requires measurable goals designed to meet the child's educational needs that result from the student's disability. *SS v. Howard Road Academy*, 585 F.Supp.2d 56 (D.D.C. 2008); *Sarah D. v. Board of Education of Aptakisic-Tripp Community Consolidated School District No. 102*, 642 F.Supp.2d 804, 52 IDELR 281 (N.D. Ill. 2009).

40. Thus, in order to provide substantive FAPE, an IEP must establish goals which respond to all significant facets of a student's disability, academic, behavioral, and functional. 20 USCA 1414(d)(1)(A)(i)(II);*Sarah D., supra.*

41. Goals should describe what a child with a disability can reasonably be expected to accomplish within a 12 month period in a special education program. *Letter to Butler*, 213 IDELR 118 (OSERS 1988).

42. Each IEP goal should correspond to some item of instructions or services identified in the IEP. *Burlington School District*, 20 IDELR 1303 (SEA VT 1994).

43. An IEP that lacks meaningful educational goals may be fatally defective. *Susquentia School District v. Raelee S*, 25 IDELR 120 (M.D. Pa. 1996). It is very difficult (and nearly impossible) to appropriately address a student's needs without first defining the goals which will provide a reasonable educational benefit. *Conemaugh Township School District*, 23 IDELR 1233 (SEA PA 1996).

V. Application of law to Fact

46. The undersigned finds that the District acted unreasonably in designing Student's IEP and in attempting to provide Student FAPE. In making this finding, the undersigned finds: (a) the District is entitled to little or no deference in methodology regarding the provision of educational services in basic math as the District failed to articulate any methodology to teach Student basic math; (b) the current IEP completely fails to address Student's needs in basic math including failing to provide comprehensive goals in basic math; (c) relatedly, the District failed to consider an important apect of Student's unique needs, strengths and weaknesses in determining how to teach Student basic math; (c) the District continued to implement a failing IEP for years without significantly changing its methodology or provision of services in basic math; (d) the District completely ignored the statutory preference for providing research based methodologies for teaching Student basic math; and (e) the District ignored multiple case study evaluations showing Student's needs in basic math. For the above stated reasons, the District's IEP was not reasonably calculated to provide Student with an educational benefit in basic math (specifically, his difficulty in understanding basic math).

47. The undersigned rejects the District's claims that Student cannot be educated in basic math for the reasons set forth in this order. The undersigned therefore further finds that the District failed to design an IEP which addressed all aspects of Student's disability in that the IEPs failed to address Student's needs in basic math.

48. The undersigned finds that the District's strategy of teaching intermediate math with accommodations while completely ignoring Student's needs in basic math is unreasonable because the District is not addressing Student's unique educational needs.

49. Relatedly, the undersigned finds that Student's grades and progress are not appropriate evidence that the District acted reasonably because the District's accommodations completely mask Student's deficiencies in basic math calculations.

50. The undersigned finds that Student needs appropriate peer reviewed research based multisensory instruction in math in order for Student to receive FAPE. Moreover, program must be designed to remediate Student's needs in basic math. As such, the undersigned finds Student needs a program like Saxon or Singapore designed to teach Student basic math.

VI. Order

51. The District shall convene an IEP meeting within thirty days.

52. At the IEP meeting:, the IEP Team shall first formulate Student's present levels of performance in basic math calculations without the use of a calculator (including but not limited to telling time, using measurements, determining the value of money, and basic addition, subtraction, multiplication, and division).

Second, the IEP Team shall then formulate whether Student needs any accommodations to learn basic math. The IEP Team shall not formulate accommodations designed to replace an understanding of basic math. Rather, the accommodations must be designed to allow Student to learn basic math.

Third, the IEP Team shall then formulate benchmarks and goals designed to measure Student's progress in learning basic math. The goals shall include, but not be limited to goals related to telling time, using measurements, determining the value and use of money, and basic addition, subtraction, multiplication, and division.

53. After completing the requirements of Paragraph 52, the IEP Team shall then determine an appropriate multi-sensory research based methodology and program for teaching Student's basic math goals. After making such a determination, the IEP Team shall adopt said methodology and program. Any methodology and program for teaching Student basic math (including the qualifications of teaching professionals to teach Student) adopted by the IEP Team must be approved by Parent's Independent Psychologist. The program must address Student's unique needs and deficits in basic math, and must either be Saxon I or an analogous program which instructs Student in a similar fashion as Saxon I.

53. Finally, depending on the methodology and program adopted for Student, the IEP Team shall determine whether Student's current LRE is appropriate, or whether Student needs more

time outside of the general education curriculum in order for the adopted program or methodology to be appropriately administered. If Student requires more pull-out time to learn basic math, the IEP Team shall adjust Student's LRE accordingly.

54. The District must continue to provide the adopted multi-sensory, research based methodology and program for at least one calendar year from the date of this order. The Parents' request to require the adopted program for more than one year is rejected. The adopted research based program may (and hopefully will) be successful, and Student will need a different program after one year of receiving the services required by this order.

55. Within 30 days of this order, The District shall provide Student with a laptop computer. The laptop computer shall have all programs required by Student's IEP loaded onto the laptop.

56. The District shall provide proof of compliance with this order to the Illinois State Board of Education, Compliance Division, by February 10, 2014.

VII. Right to Request Clarification

57. Section 14-8.02a(h) of the School Code, allows the hearing officer to retain jurisdiction after the issuance of the decision for the sole purpose of considering a request for clarification. A request for clarification shall specify the portions of the decision for which clarification is sought and a copy of the request shall be mailed to the other parties and to the Illinois State Board of Education. The request shall operate to stay the implementation of those portions of the decision for which clarification is sought. I shall issue a clarification of the specific portion of the decision or issue a partial or full denial of the request in writing within ten days of receipt of the request and mail copies to all parties to whom the decision was mailed.

VIII. Finality of Decision

58. This decision shall be binding upon all parties.

IX. Right to File Civil Action

59. Any party to this hearing aggrieved by the final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02a(I) that civil action shall be brought in any court of competent jurisdiction within 120 days after this decision was mailed.

/S Joseph P. Selbka
Joseph P. Selbka Impartial Due Process Hearing Officer
Date: October 24, 2013

Joseph P. Selbka
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CERTIFICATE OF SERVICE

TO: Ms. Mary Long
Illinois State Board of Education
100 North First Street
Springfield, IL 62777-0001

[redacted]

[redacted]

[redacted]

[redacted]

The above stated parties have been served a copy of the Final Hearing Officer Determination and Order Via certified mail, return receipt requested.

/S Joseph P. Selbka
Joseph P. Selbka
The Hearing Officer

10/24/2013
Date